

Decision 05-10-047

October 27, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
for Adoption of its 2005 Energy Resource  
Recovery Account (ERRA) Forecast Revenue  
requirement and for Approval of its 2005  
Ongoing Competitive Transition Charge (CTC)  
Revenue Requirement and Rates. (U 39 E)

Application 04-06-003  
(Filed June 1, 2004)

**ORDER MODIFYING DECISION (D.) 05-02-040**  
**AND DENYING REHEARING OF THE DECISION, AS MODIFIED**

**I. INTRODUCTION**

In this decision, we dispose of applications for rehearing filed by Modesto Irrigation District ("Modesto ID") and Merced Irrigation District ("Merced ID") of Decision (D.) 05-02-040 ("Decision"). In D.05-02-040, we adopted the 2005 revenue requirements for Pacific Gas and Electric Company's ("PG&E's") Energy Resource Recovery Account ("ERRA") and ongoing (or "tail") Competition Transition Charge ("CTC"). CTC issues litigated in PG&E's 2004 ERRA proceeding (Application (A.) 03-08-004) and disposed of in D.05-01-031 were also incorporated in D.05-02-040. (D.05-02-040, pp. 10-11.) With respect to the tail CTC issues that were litigated in this proceeding, we determined that: (1) the \$21 million costs associated with restructuring QF contracts should be included in tail CTC (D.05-02-040, p. 7); and (2) the \$52.12/MWh benchmark that PG&E proposed for calculating the ongoing CTC should be adopted (D.05-02-040, p. 9).

We have carefully considered the arguments raised in the applications for rehearing and are of the opinion that Applicants have failed to demonstrate grounds for

granting rehearing. However, we modify D.05-02-040 to clarify our reasons for including the \$21 million in QF restructuring costs in tail CTC and to clarify Finding of Fact No. 4. Rehearing of D.05-02-040, as modified, is denied. Finally, we deny Merced ID's request for oral argument.

## II. DISCUSSION

### A. **The Commission properly incorporated the ongoing CTC issues disposed of in D.05-01-031 in D.05-02-040.**

All parties to the instant proceeding concurred that ongoing CTC issues litigated in PG&E's 2004 ERRRA proceeding (Application (A.) 03-08-004) would be incorporated as part of the 2005 ERRRA proceeding. (See D.05-02-040, pp. 10-11.) D.05-01-031 ("*2004 ERRRA Decision*") disposed of CTC issues raised in A.03-08-004, including "the method to calculate ongoing CTC costs for departing load customers, [the] method to determine the ongoing CTC benchmark, and ongoing CTC-eligibility for QF power purchase agreement extension costs." (D.05-02-040, p. 10.)

Modesto ID asserts that D.05-02-040 should not incorporate the *2004 ERRRA Decision*'s CTC findings as those findings are unlawful. Specifically, it charges that: (1) the ongoing CTC determinations established in the *2004 ERRRA Decision* does not comply with Public Utilities Code Section 368<sup>1</sup> and is discriminatory because MDL customers would pay a higher costs than bundled or direct access customers (see Modesto ID's Rhg. App., pp. 4-5) and (2) the *2004 ERRRA Decision* violated Section 367(b) by allowing recovery of the contract extensions ordered in D.02-08-071 and D.03-12-062 through tail CTC (see Modesto ID's Rhg. App., p. 5). Merced ID also notes that it has challenged the CTC calculation adopted in the *2004 ERRRA Decision* on the grounds that it is contrary to Section 367(b) and discriminatory. However, while it believes D.05-02-040 contains the same alleged errors, Merced ID did not repeat its arguments in its

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<sup>1</sup> Unless otherwise specified, all statutory references are to the Public Utilities Code.

application for rehearing of this Decision, but rather stated that it does not waive these arguments. (Merced ID's Rhg. App., p. 3.)

These issues raised by Modesto ID and Merced ID have been addressed and disposed of in a companion order decided today addressing applications for rehearing of D.05-01-031. In disposing of the applications for rehearing of D.05-01-031, we determined that the CTC rate adopted in the *2004 ERRRA Decision* did not violate Section 368 and that, although MDL customers could pay different ongoing CTC amounts than bundled service and direct access customers, this difference did not constitute unlawful discrimination since the same methodology had been used to calculate tail CTC for all customers. We also concluded that we properly permitted PG&E to recover costs associated with the QF contract extensions through tail CTC. Rather than repeat our discussion and findings again, we adopt the findings of D.05-10-046 and deny rehearing of these issues.

**B. The \$21 million of QF restructuring costs were properly included in the tail CTC calculation.**

As part of its ongoing CTC revenue requirement, PG&E included \$21 million of QF restructuring costs. Applicants acknowledge that Section 367(a)(2) permits the recovery of costs associated with the "buy-out, buy-down or renegotiation" of power purchase contracts. (See Modesto ID's Rhg. App., p. 6; Merced ID's Rhg. App., p. 4.) However, Merced ID and Modesto ID contend that the Decision erred in approving the inclusion of the full \$21 million in restructuring costs in tail CTC. They assert that pursuant to Section 367(b), the "economic portion of restructured QF contract costs may only be collected in bundled rates." (Merced ID's Rhg. App., p. 5; Modesto ID's Rhg. App., p. 7.) Based on this, Merced ID and Modesto ID argue that only a portion of the \$21 million should be included in ongoing CTC. This argument fails.

As discussed in our order disposing of the applications for rehearing of D.05-01-03, Section 367(b) applies to transition costs, not ongoing CTC. Thus, Section 367(b) is not applicable and there is no requirement to allocate the QF restructuring costs between "economic" and "uneconomic" costs. Further, Section 367(b) concerns

calculation of uneconomic costs associated with generation-related assets. (See, Pub. Util. Code, §367, subd. (b).) However, the QF restructuring costs at issue are associated with the buy-out of two QF contracts which was approved in Resolution E-3643, dated December 2, 1999. (See Exh. 6, Answer No. 7, p. 1.) The buy-out does not include the provision of any power. Consequently, these costs are not associated with generation of power and Section 367(b) does not apply.

More importantly, assuming *arguendo* that Section 367(b) did apply, we properly permitted PG&E to include the entire \$21 million in the ongoing CTC calculation. When determining whether the buy-out of the QF contracts was reasonable and would result in ratepayer savings, the restructuring costs were compared against the difference between the “above-market payments, less the cost of replacement power.” (Resolution E-3643, dated December 2, 1998, p. 5.) Since the restructuring costs were less than the difference, there would be ratepayer savings and the buy-out was approved. (See Resolution E-3643, dated December 2, 1998, p. 6.) That is to say, Resolution E-3643 determined that ratepayers would pay less uneconomic costs if the contracts were restructured (i.e., bought out) than if the contracts remained in effect. Consequently, the restructuring costs effectively consist of only above-market (i.e., uneconomic) costs. Accordingly, the entire \$21 million in restructuring costs would have been included in ongoing CTC calculations under Section 367(b).<sup>2</sup>

Merced ID also argues that the Commission failed to explain why it agreed with PG&E’s arguments that the full \$21 million of restructuring costs should be included in the Tail CTC calculation. (See Merced ID’s Rhg. App., p. 6.) Merced ID’s argument may have some merit, because we may not have clearly explained why we agreed with PG&E’s arguments. Accordingly, we modify the Decision as ordered herein

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<sup>2</sup> Both Modesto ID and Merced ID argue that pursuant to Section 367(b) the restructuring costs should be netted against the market benchmark to determine the uneconomic portion of the costs to be recovered through tail CTC. (See Modesto ID’s Rhg. App., p. 7; Merced ID’s Rhg. App., p. 6.) However, since the entire amount of restructuring costs are effectively considered uneconomic, it is unclear why this amount should be again netted against the market benchmark. Modesto ID and Merced ID fail to cite to any legal requirement for such an action and, thus has provided grounds for granting rehearing.

to more clearly explain why we permitted PG&E to include the \$21 million in QF restructuring costs in tail CTC calculations.<sup>3</sup>

**C. Merced ID's request for oral argument is denied.**

Merced ID requests oral argument regarding the Commission's determination that the full QF restructuring costs should be included in tail CTC. (Merced ID's Rhg. App., pp. 7-8.) Rule 86.3(a) of the Commission's Rules of Practice and Procedure specifies that oral argument shall be granted if the application: "(1) demonstrates that oral argument will materially assist the Commission in resolving the application, and (2) the application or response raises issues of major significance for the Commission. . . ." (Code of Regs., tit. 20, §86.3, subd. (a), emphasis added.)

Merced ID argues that the allocation of QF contract restructuring costs is "a question of first impression" and that CTC issues are a "subject of intense debate among the parties." (Merced ID's Rhg. App., p. 8.) However, the issue of allocating the QF restructuring costs has been argued by parties in this proceeding. Merced ID fails to explain how oral argument will "materially assist the Commission in resolving the application" beyond what has already been presented in briefs, the application for rehearing and the response to the application for rehearing. Further, with the modifications ordered herein, it is clear that the Decision is not establishing any new precedent, but rather implementing prior Commission rulings concerning the inclusion of uneconomic costs in tail CTC. For these reasons, Merced ID's request for oral argument is denied.

**Therefore, IT IS ORDERED** that:

1. D.05-02-040 is modified as follows:
  - (a) On page 7, the first full paragraph is deleted and replaced with the following:

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<sup>3</sup> We further note that Finding of Fact No. 4 does not clearly explain that our previous determination regarding costs associated with QF contracts applied only to those contracts extended pursuant to Commission orders. Therefore, in this order we shall also clarify Finding of Fact No. 4.

“PG&E responded that QF restructuring contract costs are recorded under its MTCBA preliminary statement as ongoing CTC in their entirety and that there are no kilowatt-hours (kWh) associated with the costs in question. Therefore PG&E believes that there is no “market” component to these costs and no basis for excluding them from its estimate of 2005 ongoing CTC costs.

We concur with PG&E. The QF restructuring costs at issue are associated with the buy-out of two QF contracts which was approved in Resolution E-3643, dated December 2, 1999. (See Exh. 6, Answer No. 7, p. 1.) The buy-out does not include the provision of any power. To the extent Section 367(b) would be applicable, there is no reasonable basis for determining the above and below market costs associated with *not* purchasing power. More importantly, the buy-out of the two contracts at issue was approved on the basis that ratepayers would pay less uneconomic costs as a result of the buy-out than if the contracts were to continue under their original terms. This leads us to conclude that the entire \$21 million in restructuring costs should be considered “above market” costs. For these reasons, we find that the \$21 million QF restructuring costs should be included as a component of the 2005 ongoing CTC costs.”

(b) On page 12, Finding of Fact No. 4 is deleted and replaced with the following:

“4. D.05-01-031 found that costs associated with the extension of QF contracts ordered pursuant to D.02-08-071 and D.02-12-063 are properly included as a component of the CTC calculation.”

(c) On page 13, Finding of Fact No.14 is deleted and replaced with the following:

“14. The QF restructuring costs are not associated with the purchase of power, but rather payment associated with the buy-out of two QF contracts.

15. There was no opposition to PG&E’s 2005 ERRAs forecast.”

2. Rehearing of D.05-02-040, as modified, is denied.
3. Merced ID’s request for oral argument is denied.

4. Application (A.) 04-06-003 is closed.

This order is effective today.

Dated October 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
DIAN M. GRUENEICH  
JOHN A. BOHN  
Commissioners